

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH JAIPUR.

O R D E R

Kanhaiya Lal Sharma
Vs.
Smt.Madhu Choudhary and anr.

S.B. CIVIL WRIT PETITION NO.2809/2007.

Date of Order:- 14/5/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Saransh Saini for the petitioner.
Shri B.L. Agrawal with
Shri Amit Gupta for respondent No.1.

Heard learned counsel for the
petitioner.

This writ petition has been filed
by the petitioner challenging the order
dated 24/11/2006 by the learned
Additional Civil Judge (Sr.Div.) &
Judicial Magistrate No.6, Jaipur City,
Jaipur whereby his application filed
under Section 151 read with Order 41
Rule 5 CPC and Sec.13(1) and 9 of the

Rajasthan Premises (Control of Rent & Eviction) Act, 1950 for appointment of Commissioner at the stage of execution of a decree passed against him in the suit for ejectment has been rejected. In the application, the petitioner raised dispute about the description of the property for which proceedings have been initiated by the decree holder respondent. It may be noted that specific Issue No.4 was framed by the court in that suit with regard to the description of the property and that issue was decided against the petitioner not only by the trial court but also by this Court in S.B. Civil Second Appeal No.73/2005 titled as Kanhiyalal Vss. Smt.Madhu Choudhary vide judgment dated 2/1/1006. The special leave to petition against that judgment has also been dismissed by the Hon'le Supreme Court.

The petitioner separately filed a suit for getting himself declared as owner of the suit property. In that suit Issue No.12A was to the effect whether

the property in dispute was gifted to the petitioner by Rao Bhagat Singh by way of patta and he was in possession of the said property as owner thereof. The civil suit of the petitioner was dismissed by the trial court on 2/3/2007 and thereafter his regular first appeal was dismissed by this Court vide judgment dated 2/4/2007 (S.B. Civil Regular First Appeal No.163/07) and it has been informed that special leave to petition against that judgment has also been rejected. Thus, the judgment of the trial court in the suit filed by the petitioner for declaration and permanent injunction claiming ownership of that property has also attained finality. Now, it is in this context that application of the petitioner seeking appointment of Commissioner disputing that second floor of the property in question was not covered by the decree passed by the court therefore the Commissioner be appointed to go on the site and inspect whether such property

was covered by the decree before deciding his objection to the execution application under Order 22 Rule 11 CPC. Objection raised by the petitioner is that the decree is only with regard to the first floor therefore he can be evicted only from that floor only.

On perusal of the judgment passed by the trial court as also by the first appellate court, I do not find that any such question was raised by the petitioner before the trial court. In fact, on perusal of the the contents of the plaint as also the relevant para of the agreement to sell as reproduced in para 35 of the judgment of the first appellate court dated 16/12/2004, there does not appear to be any distinction whether property of only second floor was to be covered therein. In that para, a reference has been made only to constructed house with the description of the area covered therein. This is third attempt on the part of the petitioner to resist execution of the

decree in having lost two series of litigations upto the Hon'ble Supreme Court. On perusal of the impugned order of the trial court whereby the application of the petitioner seeking appointment of the Commissioner has been rejected, I do not find that the same is suffering from any illegality or infirmity as may require interference by this court.

The writ petition being devoid of merit and substance is hereby dismissed.

(MOHAMMAD RAFIQ), J.

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